LIMITATION OF ACTION — ACCRUAL OF ACTION — EFFECT OF APPEAL ON RUNNING OF STATUTE OF LIMITATIONS. — A suit was brought for money paid upon an existing consideration which later failed through judicial action setting the transaction aside. The statute of limitations required suit for such money to be brought within three years from the date of the failure of the consideration (1877 INDIAN LIMITATION ACT, Art. 97). This action was brought within three years of the dismissal of an appeal from the decree setting aside the original transaction, but more than three years from the decree of the lower court. *Held*, that the action is barred. *Boid* v. *Chowdhury*, 26 Madras L. T. R. 131 (Privy Council).

Where an appeal has the effect of suspending the judgment from which appeal is taken, the running of the statute of limitations on a cause of action arising out of the judgment should likewise be suspended. *Irvine* v. *Bankard*, 181 Fed. 206; *Bowen* v. *Lovewell*, 119 Ark. 64, 177 S. W. 929; *Donovan* v. *Dickson*, 37 No. Dak. 404, 164 N. W. 27. If a stay or supersedeas bond or other security named in the statute be given, an appeal will suspend the original judgment. *Hubbard* v. *Bank of Los Angeles*, 120 Cal. 632, 52 Pac. 1070; *Coombs* v. *Barker*, 33 Mont. 74, 81 Pac. 737. And even though no security is given, this is true under some statutes. *Sunter* v. *Sunter*, 204 Mass. 448, 90 N. E. 561; *Merrifield* v. *Piano Co.*, 238 Ill. 526, 87 N. E. 379. But in general, if no security be given, a judgment is not affected by an appeal. *In re Nat'l Metal Co.*, 155 Fed. 690; *Ex parte Meyer*, 209 N. Y. 59, 102 N. E. 606. And in the principal case, the court found this to be the case under the Indian law. The cause of action accrued to the plaintiff at the time of the original decree. Since that decree is enforceable notwithstanding the appeal, there is no reason why the statute of limitations should be suspended during the appeal. *Delay* v. *Yost*, 59 Kan. 496, 53 Pac. 482; *Bank of Stockham* v. *Weins*, 12 Okla. 502, 71 Pac. 1073; *Howard Ins. Co.* v. *Silverberg*, 94 Fed. 921.

PROXIMATE CAUSE — MUNICIPAL CORPORATIONS — NOTICE OF ONE DEFECT IN SIDEWALK PUTS CITY ON NOTICE OF ANOTHER DEFECT. — An inspector of the appellant city noticed a small hole chipped in the end of a plank in a board walk, and ordered a new plank inserted. The plank, though apparently sound except for the hole, was rotten in the middle; and three days after the inspector's order the respondent was hurt by stumbling through it. The jury found the city negligent in delaying to insert the new plank. *Held*, that judgment for the respondent be affirmed. *City of Winnipeg* v. *Einarson*, 50 D. L. R. 440 (Manitoba).

The hole was a defect which the city was under a duty to repair. *Upham* v. *City of Boston*, 187 Mass. 220, 72 N. E. 946. Failure to repair the hole after notice was negligence in the performance of that duty. And it may be assumed from the inspector's order that the reasonable way to repair it was by inserting a new plank. It follows that if the city had done its duty in repairing the hole it would have discovered the defect in the center of the plank. Under these circumstances the city is chargeable with notice of the latent defect in the center, and hence not to repair it constituted negligence. *Dallas* v. *McAllister*, 39 S. W. (Tex.) 173. This negligence was a proximate cause of the injury; for the only intervening cause between it and the injury was the act of the plaintiff in stepping on the plank, and that act was surely forseeable. In other words, the city by its negligence took the risk that some one would step on the plank, and the city must be liable for the direct result. See Joseph H. Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633, 650.

REMOVAL OF CAUSES — SEPARABLE CONTROVERSY — FRAUDULENT JOINDER AS GROUND FOR REMOVAL FROM STATE TO FEDERAL COURTS. — In an action brought in the state court against a non-resident corporation and its resident

employee the complaint alleged that the plaintiff had been injured by dynamite caps owned by the corporation and negligently exposed by the employee who was storekeeper. The non-resident defendant obtained a removal to the federal court on the ground of fraudulent joinder. The plaintiff moved to remand, supporting his motion with affidavits of his good faith but without a statement of the grounds for his belief. *Held*, that the motion be denied. *Zigich* v. *Tuolumne Copper Mining Co.*, 260 Fed. 1014 (Dist. Ct. Mont.).

The plaintiff alleged that while in the employ of the non-resident defendant corporation he was ordered by the foreman, the resident defendant, to go up a telegraph pole, where he was injured by contact with a high-power wire because of the failure of the corporation to provide him a safe place to work and the failure of the foreman to warn him. Because of diverse citizenship the corporation sought a removal on the grounds that the controversies were separable, and that the joinder was fraudulent. *Held*, that the removal be denied. *Postal Telegraph-Cable Co.* v. *Puckett*, 101 S. E. 397 (Ga.).

For a discussion of these cases, see NOTES, p. 970, *supra.*

RESTRICTION AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — RESTRICTIONS IN PRICE ON RESALE. — A corporation engaged in the manufacture of accessories for automobile tires under letters patent sold its product to jobbers under contracts establishing the resale price of these articles, and refused to sell to any jobber who would not enter into such agreements and adhere to the uniform resale prices fixed. Upon these facts, the corporation was indicted for engaging in a combination rendered criminal by Section 1 of the Sherman Anti-Trust Law. The District Court for the Northern District of Ohio sustained a demurrer to the indictment. A writ of error was brought under the Criminal Appeals Act (34 STAT. AT L. 1246). *Held*, that the judgment be reversed. *United States* v. *A. Schrader's Son, Inc.*, U. S. Sup. Ct., October term, 1919, No. 567.

For a discussion of this case, see NOTES, p. 966, *supra.*

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — THE STEEL CORPORATION CASE. — The United States brought suit under the Sherman Anti-Trust Act against the United States Steel Corporation, asking for dissolution of that corporation and certain of its subsidiaries on the ground that they constituted a monopoly in restraint of trade. *Held*, that the bill be dismissed. *United States* v. *United States Steel Corporation*, U. S. Sup. Ct., October term, 1919, No. 6.

For a discussion of this case, see NOTES, page 964, *supra.*

RULE AGAINST PERPETUITIES — CHARITABLE GIFTS — REMOTENESS WHERE THERE IS NO PRECEDING GIFT. — Personalty was bequeathed "to the first . . . Orphans' Home . . . built in X," with the provision that "should one of the Homes not be founded there at the time of my decease," the executors should invest the funds "until such time as one of such institutions shall be founded." The executors brought a bill for the construction of the will, that the validity of the gift might be determined. *Held*, that the gift was void. *Re Schjaastad Estate*, 50 D. L. R. 445 (Sask.).

A gift over to a charity from an individual, on a contingency too remote under the rule against perpetuities, is void. *In re Johnson's Trusts*, L. R. 2 Eq. 716; *Smith* v. *Townsend*, 32 Pa. St. 434. But if the first taker is also a charity, the gift is held valid. *Christ's Hospital* v. *Grainger*, 16 Sim. 83; *MacKenzie* v. *Trustees*, 67 N. J. Eq. 652, 669, 61 Atl. 1027, 1034. See 8 HARV. L. REV. 211. This doctrine might be applied with equal logic where there is no preceding gift. Yet it is here well settled that the charity may not take if the contingency upon which it is to vest is too remote. *In re Stratheden*, [1894]